IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.26/2002

Kailas Bhagat,
through Superintendant,
Central Jail,
Aguada, Bardez, Goa. .... Petitioner.

V/s.
State of Goa, through the
Inspector General of Prisons,
Panaji, Goa. .... Respondent.

66.S.G. Bhobe, Advocate appointed under the Legal Aid Panel, for the petitioner.

Mr. V.P. Thali, Addl. Advocate General with Ms. G. Pednekar, Addl. Govt. Advocate for the respondent.

CORAM : P.V. HARDAS, J.

DATE : AUGUST 30, 2002.

ORAL JUDGMENT :

Rule. Rule made returnable forthwith by consent of parties.

2. This petition has been filed by the petitioner from jail. The petitioner is presently undergoing a sentence of imprisonment passed by the Special Judge, N.D.P.S. Court, Mapusa in Special Criminal Case No.27/2000. The appeal challenging the conviction and sentence has been admitted by this Court and is pending final hearing.

3. The grievance of the petitioner in the present petition is that he had filed an application for

parole on 8.10.2001. The xerox copy of the parole application has been filed by the petitioner along with the application which is presented through Jail. It appears that the parole was sought on the grounds, namely (1) the petitioner wanted to visit his parents, as his parents due to their old age could not visit him in the prison; and (2) the petitioner is suffering from HIV positive and tuberculosis. The petitioner had, thereafter, submitted two reminders dated 8.3.2002 and 13.4.2002. The petitioner was orally informed that his parole application has been dismissed and he was asked to submit fresh application. Aggrieved by inaction on the part of the respondent, the petitioner has filed the present petition.

4. The respondent has filed an affidavit of Smt. Manisha Saxena, Inspector General of Prisons, dated 17.8.2002. In the said affidavit, it is stated that the application of the petitioner dated 8.10.2001 was received by the Jailor Shri Dattaram Kudchudkar on 12.10.2001 with an inward no.1974. Since the said application was not traceable, it could not be processed further. In response to the two reminders, it is stated in the affidavit that the two reminders had been received by one Shri M.S. Naik, who had filed both the said reminders in the judicial misc. file instead of prisoners' file.

5. Mr. V.P. Thali, the learned Addl. Advocate General has fairly stated that since a xerox copy of the application for parole of the petitioner dated 8.10.2001 is now made available, as it is annexed to the petition of the petitioner, the authorities would process the said application and decide it in accordance with law within a period of 8 weeks from today.

6. This leads to a disquieting feature of the administration of jail. The parole application was misplaced by the Jailor Shri Datta Kudchadkar. An attempt was made to ask the petitioner to give another application which could be processed. The fact that the petitioner did not give another application does not absolve the respondent of the responsibility and the diligence with which they are expected to perform their duties. This is, of course, a case of negligence and dereliction of duty which cannot be countenanced. In view of this, I am inclined to award costs to the petitioner. The State, of course, is at liberty to recover the costs from Shri Datta Kudchadkar who, prima facie, is solely responsible for misplacing the application of the petitioner. It is also stated that Shri Datta Kudchadkar who was Jailor at the relevant time, is presently under suspension in connection with some other instances of misconduct. Shri Datta Kudchadkar, in his reply dated 21.8.2002, which is produced before me for my perusal, admits to have

received the parole application of the petitioner dated 8.10.2001. For this act of misconduct, the State is of course at liberty to take appropriate departmental proceedings. The Inspector General of Prisons cannot be faulted for not having dealt with the application of parole filed by the petitioner as the same was never placed before the Inspector General of Prisons. The fault for misplacing the said application lies with the Jailor Shri Kudchadkar. The imposition of costs on the State does not cast any reflection in the performance of the duties by the Inspector General of Prisons.

7. Since the learned Addl. Advocate General assures the Court that the application of the petitioner for parole would be processed and decided as per law within eight weeks from today, this petition is disposed of directing the respondent to decide the application of the petitioner within 8 weeks from today. The respondent is directed to pay costs of Rs.10,000/- to the petitioner within two weeks from today. The State is at liberty to recover the costs from Shri Datta Kudchadkar if they deem fit.

8. With the above directions, the petition stands disposed of.

P.V. HARDAS, J.

ssm.